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IN THE

Supreme Court of the United States

October Term, 1975
No. 75-897

EUGENE ENSLIN,

Petitioner,

v.

THE STATE OF NORTH CAROLINA,

Respondent.

BRIEF AMICUS CURIAE OF LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC., IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

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INTEREST OF AMICUS CURIAE*

Lambda Legal Defense and Education Fund, Inc. is a New York corporation organized to seek, through the legal process, to insure the legal rights of gay people. It is similar in scope and purpose to the NAACP Legal Defense and Educational Fund, Inc. and seeks to function for gay people in the same way the NAACP Legal Defense and Educational Fund, Inc. has functioned for black people. Lambda Legal Defense and Education Fund, Inc. (hereinafter "Lambda") is authorized to practice law by the courts of New York.

In accordance with its purpose to

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*This brief is filed with the consent of the parties. The letters of consent are filed with the Clerk of the Court.

seek to insure, through the legal process, the legal rights of gay people, Lambda is interested in and concerned by the decision of the court below which sustained the conviction of petitioner Eugene Enslin for engaging in homosexual sexual relations in the privacy of his own home with another consenting adult.

Lambda agrees with petitioner that the aforesaid action of respondent was a denial of equal protection of the law and of petitioner's constitutional right of privacy.

Lambda has taken this extraordinary step of filing a brief amicus curiae in support of the petition for a writ of certiorari because of the encouragement and sanction the decision of the court below will give to the invasion of the right of privacy of gay people and the denial of equal protection of the law to them if the court below's denial of relief

is allowed to stand.

OPINIONS BELOW

No opinion was rendered by the Supreme Court of North Carolina. The opinion of the North Carolina Court of Appeals is unreported and is set forth in the Appendix to the petition for writ of certiorari. No opinion was rendered by the Superior Court of Onslow, North Carolina.

JURISDICTION

The judgment and order of the Supreme Court of North Carolina was entered on August 25, 1975. By order dated November 20, 1975 Mr. Chief Justice Burger extended the time for filing this petition to and including December 23, 1975. The jurisdiction of this Court is

invoked pursuant to 28 U.S.C. Section 1257 (3).

QUESTIONS PRESENTED

A. Whether North Carolina General Statute 14-177 violates the constitutional right of privacy guaranteed by the First, Third, Fourth, Fifth, Ninth and Fourteenth Amendments to the Constitution of the United States.

B. Whether North Carolina General Statute 14-177 violates on its face the equal protection clause of the Fourteenth Amendment.

C. Whether North Carolina General Statute 14-177 is so vague that it violates the due process clause of the Fourteenth Amendment.

D. Whether the arbitrary enforcement of North Carolina General Statute 14-177

deprived petitioner of Due Process and Equal Protection as guaranteed by the Fourteenth Amendment to the United States Constitution.

STATUTORY PROVISION INVOLVED

General Statutes of North Carolina Section 14-177:

> If any person shall commit the crime against nature, with mankind or beast, he shall be guilty of a felony, and shall be fined or imprisoned in the discretion of the court.

STATEMENT OF THE CASE

Pursuant to Rule 42(5) of this Court, the statement of the case is omitted in this brief amicus curiae, and the Court is referred to the statement of the case in the Petition for Certiorari.

REASONS FOR GRANTING THE WRIT

The petition for writ of certiorari has outlined why the decisions of the Courts of North Carolina in this action are contrary to the commands of the U.S. Constitution and the decisions of this Court. We will not repeat petitioner's analysis other than to note that we are in agreement with it. Instead, we shall endeavor to bring to this Court's attention the nature and extent of the enormous injustice which sodomy statutes foster, directly and indirectly, for the purpose of demonstrating the urgency and importance of examining the constitutionality of these statutes.

The facts in this action provide an appropriate point of departure. In order to arrest and convict Mr. Enslin, the police had to induce a seventeen year old non-gay to have sexual relations with Mr. Enslin. It is

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easy, perhaps, to regard this incident as regrettable but aberrational, the isolated example of misconduct which lacks the broader implications which mandate review by this Court. Unfortunately, this incident is not aberrational.

The enforcement of the sodomy laws as they relate to conduct in private habitually involves the police in the roles of procurer, panderer or seducer. Indeed, it is difficult to imagine how else evidence could be obtained.

The usual method of operation, as it has been reported over and over again to Lambda, is for a young, attractive, male police officer to go to a gay gathering spot. The officer will be provocatively dressed and will have been briefed on how to invite an approach. If an approach is made, the officer and his victim will head for a private premises, and

BAD BLEED

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the victim will then be arrested. Whether the arrest is made before or after the sexual act depends on the officer's preference. There are many variations on this basic pattern, of which the Enslin case is one, but this is the fundamental method of enforcement.

It should be noted that the police in adopting this policy of seduction are not acting in response to any complaints from the public about unwanted sexual soliciations but, instead, are engaging in one of their own periodic, and essentially capricious, campaigns. In the City of New York, for example, solicitation arrests of gay people prior to the administration of John Lindsay were numerous. Mayor Lindsay forbade solicitation arrests except on the complaint of a private citizen whereupon solicitation arrests dropped to zero.

However, the fact that sodomy laws,

if they are to be enforced at all, require improper police practices is not, in our judgment, their worst defect. The worst defect of the sodomy laws is that they serve as a pretext, socially and psychologically, for extensive discrimination and generally abusive conduct against gay people.

As an illustration, Lambda was informed of an anti-gay campaign launched in January of this year in a major city in the southwest. This particular campaign took the form of police entering gay bars and arresting half a dozen or a dozen patrons at random and charging them with public intoxication. The patrons were not drunk but, nevertheless, would have to spend a night in jail before being released in the morning. No other group in this country could be treated in this fashion, but gay people, made "criminals" by

the sodomy laws, can be and repeatedly are so treated.

Gay people are fired without cause because they are "criminals". They are assaulted, sometimes even by law enforcement personnel, because they are "criminals". They are often without recourse when they are the victims of crime because the police regard them as "criminals" and will refuse to prosecute their claims. They are denied access to certain government jobs or to military service because they are "criminals". Some may even lose their children because they are "criminals".

As for the millions of gay women and me who pass as being non-gay, the emotional and psychological cost to them of a life of concealment necessitated by a desire to avoid being exposed as a "criminal" is incalculable.

To be sure, the elimination of sodomy laws will not eradicate prejudice and discrimination

against gay people, but, just as the elimination of legal segregation and miscegenation laws were a necessary first step to the elimination of race prejudice, so the elimination of the sodomy laws is the essential first step to the elimination of unwarranted prejudice against gay people.

Law has been the means of opening the door to full participation in society for many minorities. Sodomy laws barricade that door against millions. It is time that these barricades were scrutinized by this Court.

CONCLUSION

For the reasons set forth above, the petition for certiorari should be granted.

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